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NATIONAL CONGRESS OF AMERICAN INDIANS

March 24, 2022

The Honorable Charles Schumer
Majority Leader
U.S. Senate
S-221 U.S. Capitol Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
S-230 U.S. Capitol Building
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
1236 Longworth House Office Building
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
2468 Rayburn House Office Building
Washington, D.C. 20515

Re: NCAI Support for the Tribal Access to Clean Water Act of 2022

Dear Senate Majority Leader Schumer, Senate Minority Leader McConnell, Speaker of the House Pelosi, and House Minority Leader McCarthy:

On behalf of the National Congress of American Indians (NCAI), the oldest and largest national organization of Tribal Nations and their citizens, I write to express NCAI's strong support for the Tribal Access to Clean Water Act of 2022. This legislation, a copy of which is attached, will be introduced by Representative Joe Neguse of Colorado, together with other House co-sponsors.

This bill will help to correct a problem that should not exist in 2022 in this country – the lack of access to clean drinking water by many Native American households. Almost half of Native American households do not have the same basic water and sanitation services that are taken for granted by the rest of the population. The deprivation of this basic service affecting over half a million residents of tribal communities constitutes one of the fundamental inequities of our time and runs counter the trust responsibility the federal government has with Tribal Nations.

The public health impacts of not having clean water are well documented and have been exacerbated during the pandemic as American Indians and Alaska Natives have the highest hospitalization and death rates from COVID-19 of any ethnic group. Many Native communities have watched their children, relatives, and neighbors struggle with the impacts of COVID-19. We have a responsibility to ensure that preventable tragedies like this do not continue to happen.

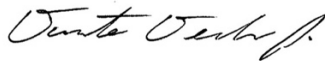
The bipartisan Infrastructure Investment and Jobs Act (IIJA) was a huge step forward in addressing this problem. However, after decades of chronic underfunding we need to look at providing complete solutions to address access to clean water in Indian Country. This includes essential construction funding as well as support for the appropriate operation and maintenance (O&M) of these new systems. Providing sufficient O&M support ensures that water infrastructure will

not deteriorate faster than expected and will lower cost increases as the infrastructure ages. Tribal water systems present unique challenges, such as managing high capital and operating costs in remote locations and finding and retaining qualified water system operators. The Indian Health Service (IHS) has been authorized to provide O&M assistance since the 1950s, but this authority has never been funded. Funding the necessary human capital component that will make the infrastructure investment effective and permanent is just as important.

There is a dire and documented need for the development of tribal technical, managerial, and financial capacity through technical assistance (TA) funding. Increased TA will help Tribal Nations to better navigate the complex array of federal agencies and fulfill critical needs for engineering evaluation, design of water infrastructure systems, and training certified operators. Many of these concerns have been expressed by Tribal Leaders in the listening sessions conducted by IHS in recent months.

Representative Neguse's bill will help fill essential gaps in the funding that still exist and will ensure that the full benefit of the historical investment made in water infrastructure in Indian country is realized. These provisions represent the human side of the equation that will make the infrastructure funding work. NCAI asks Senate and House leadership to move quickly in adopting the Tribal Access to Clean Water Act, and for Congress to work toward incorporating its provisions in pending federal funding packages. We look forward to working with Congress on this critical priority for Tribal Nations and their citizens.

Sincerely,

A handwritten signature in black ink, appearing to read "Dante Desiderio".

Dante Desiderio
Chief Executive Officer
National Congress of American Indians

.....
(Original Signature of Member)

117TH CONGRESS
2D SESSION

H. R. _____

To provide access to reliable, clean, and drinkable water on Tribal lands,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. NEGUSE introduced the following bill; which was referred to the
Committee on _____

A BILL

To provide access to reliable, clean, and drinkable water
on Tribal lands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Access to Clean
5 Water Act of 2022”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) access to reliable, clean, and drinkable
9 water is an essential human need and critical to the

1 public health, well-being, educational attainment,
2 and economic development of all communities in the
3 United States;

4 (2) many countries, along with the United Na-
5 tions, have recognized the urgency of the need to ac-
6 cess reliable, clean, and drinkable water by passing
7 laws or resolutions relating to the human right to
8 water and sanitation, including—

9 (A) recognizing these water and sanitation
10 needs exist among Indigenous peoples; and

11 (B) establishing aggressive targets for
12 achieving universal access to those basic serv-
13 ices;

14 (3) in the United States, access to reliable,
15 clean, and drinkable water has long been a signifi-
16 cant problem in many Native communities, such that
17 nearly half of all households in those communities do
18 not have access to reliable water sources, clean
19 drinking water, or basic sanitation, and are signifi-
20 cantly more likely than White households to lack in-
21 door plumbing;

22 (4) the trust responsibility of the Federal Gov-
23 ernment to Indian Tribes requires the Federal Gov-
24 ernment to ensure the survival and welfare of Indian

1 Tribes, and the failure to provide basic water service
2 cannot be reconciled with that trust responsibility;

3 (5) the ongoing COVID–19 pandemic has had
4 a disproportionate impact on Native communities
5 due to a multitude of factors, including—

6 (A) persistent economic disadvantages;

7 (B) racial inequity; and

8 (C) lack of public health infrastructure, in-
9 cluding access to running water;

10 (6) on January 27, 2021, President Biden
11 issued Executive Order 14008 (86 Fed. Reg. 7619
12 (February 1, 2021)), which provides that it is the
13 policy of the Biden Administration to secure envi-
14 ronmental justice and spur economic opportunity for
15 disadvantaged communities that have been histori-
16 cally marginalized and overburdened by pollution
17 and underinvestment in housing, transportation,
18 water and wastewater infrastructure, and health
19 care;

20 (7) through the bipartisan Infrastructure In-
21 vestment and Jobs Act (IIJA), H.R. 3684, Congress
22 has provided funding for the Indian Health Service
23 and the Environmental Protection Agency to support
24 the construction and repair of Tribal clean water in-
25 frastructure but no funding has yet been provided to

1 assist Tribes with operation and maintenance of
2 water infrastructure and such funding is necessary
3 to protect the historic investment in this infrastruc-
4 ture and to offset Tribes' inability to access funding
5 sources relied upon by most municipal water pro-
6 viders;

7 (8) technical assistance to Tribes is also nec-
8 essary to ensure that they are able to access and
9 take advantage of the new construction funding
10 made available through the IIJA, that they develop
11 the managerial, financial, and regulatory framework
12 necessary for a fully functional and self-sustaining
13 utility, and that they are able to engage appropriate
14 outside consultants to assist as needed;

15 (9) advances in water technology, including
16 treatment, sensors, and innovative pipeline mate-
17 rials, can assist in—

18 (A) accelerating efforts to provide uni-
19 versal access to reliable, clean, and drinkable
20 water for all Native communities; and

21 (B) enhancing resilience in the face of cli-
22 mate change;

23 (10) the COVID–19 pandemic has been a stark
24 reminder that access to reliable, clean, and drinkable

1 water to support basic hygiene is a matter of life or
2 death for all individuals in the United States;

3 (11) it is in the interest of the United States,
4 and it is the policy of the United States, that all ex-
5 isting Native communities be provided with safe and
6 adequate water supply systems as soon as prac-
7 ticable; and

8 (12) both appropriate funding at the level of
9 unmet need and a “whole of government” approach
10 among all Federal agencies are essential to provide
11 a meaningful solution to the lack of access to clean
12 water on Tribal lands.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) DIRECTOR.—The term “Director” means
16 the Director of the Indian Health Service.

17 (2) INDIAN TRIBE.—The term “Indian Tribe”
18 has the meaning given the term in section 4 of the
19 Indian Self-Determination and Education Assistance
20 Act (25 U.S.C. 5304).

21 (3) NATIVE COMMUNITY.—The term “Native
22 community” means—

23 (A) an Indian Tribe; and

24 (B) a Native Hawaiian.

1 (4) NATIVE HAWAIIAN.—The term “Native Ha-
2 waiian” has the meaning given that term in section
3 801 of the Native American Housing Assistance and
4 Self-Determination Act of 1996 (25 U.S.C. 4221).

5 (5) REPORT.—The term “Report” means the
6 most recent annual report required to be submitted
7 by the Secretary of Health and Human Services to
8 the President under section 302(g) of the Indian
9 Health Care Improvement Act (25 U.S.C. 1632(g)).

10 (6) SECRETARY.—Except for the purposes of
11 section 6, the term “Secretary” means the Secretary
12 of Health and Human Services, acting through the
13 Director.

14 (7) TRIBAL LAND.—The term “Tribal land”
15 means—

16 (A) land located within the boundaries
17 of—

18 (i) an Indian reservation, pueblo, or
19 rancheria; or

20 (ii) a former reservation within Okla-
21 homa;

22 (B) land not located within the boundaries
23 of an Indian reservation, pueblo, or rancheria,
24 title to which is held—

1 (i) in trust by the United States for
2 the benefit of an Indian Tribe or an indi-
3 vidual Indian;

4 (ii) by an Indian Tribe or an indi-
5 vidual Indian, subject to restriction against
6 alienation under laws of the United States;
7 or

8 (iii) by a dependent Indian commu-
9 nity;

10 (C) land located within a region estab-
11 lished pursuant to section 7(a) of the Alaska
12 Native Claims Settlement Act (43 U.S.C.
13 1606(a));

14 (D) Hawaiian Home Lands (as defined in
15 section 801 of the Native American Housing
16 Assistance and Self-Determination Act of 1996
17 (25 U.S.C. 4221)); and

18 (E) an area or community designated by
19 the Assistant Secretary of Indian Affairs of the
20 Department of the Interior that are near, adja-
21 cent, or contiguous to an Indian reservation
22 where financial assistance and social service
23 programs are provided to Indians because of
24 their status as Indians.

1 **SEC. 4. INDIAN HEALTH SERVICE.**

2 (a) **SANITATION FACILITIES CONSTRUCTION PRO-**
3 **GRAM.**—The term “Indian homes, communities, and
4 lands” for which the Indian Health Service has authority
5 “to construct, improve, extend, or otherwise provide and
6 maintain, by contract or otherwise, essential sanitation fa-
7 cilities, including domestic and community water supplies
8 and facilities, drainage facilities, and sewage- and waste-
9 disposal facilities” pursuant to Public Law 86–121 (42
10 U.S.C. 2004a) includes structures that are essential to the
11 life of the Native community and provide indispensable
12 educational, economic, and community services, such as
13 schools, hospitals, nursing homes, teachers’ homes, Tribal
14 offices, and post offices.

15 (b) **FUNDING.**—There is appropriated to the Sec-
16 retary, out of amounts in the Treasury not otherwise ap-
17 propriated, \$100,000,000 for the fiscal year ending Sep-
18 tember 30, 2023, to remain available until expended, for
19 the provision of essential sanitation facilities to community
20 structures included in subsection (a) and not previously
21 considered eligible for such service.

22 (c) **TECHNICAL ASSISTANCE FUNDING.**—In addition
23 to amounts otherwise available, there is appropriated to
24 the Secretary, out of amounts in the Treasury not other-
25 wise appropriated, \$150,000,000 for the fiscal year ending
26 September 30, 2023, to remain available until expended,

1 for technical assistance support in Native communities
2 and for other activities authorized under section 302(b)(2)
3 of the Indian Health Care Improvement Act (25 U.S.C.
4 1632(b)(2)).

5 (d) OPERATION AND MAINTENANCE FUNDING.—

6 (1) APPROPRIATION.—In addition to amounts
7 otherwise available, there is appropriated to the Sec-
8 retary, out of amounts in the Treasury not otherwise
9 appropriated, \$500,000,000 for the fiscal year end-
10 ing September 30, 2023, to remain available until
11 expended, for the operation and maintenance of
12 water facilities serving Native communities.

13 (2) PRIORITY FOR FUNDING.—In awarding
14 funding for the operation and maintenance of water
15 facilities under paragraph (1), the Secretary shall
16 prioritize water facilities that the Secretary deter-
17 mines to be the most in need of assistance.

18 (3) FUTURE FUNDING.—For not less than 5
19 years after the date on which an operation and
20 maintenance of water facilities project described in
21 paragraph (1) is completed, to the extent to which
22 annual appropriations are available, the Secretary
23 shall include the completed project as eligible for
24 sustained funding support and guidance to ensure
25 that—

1 (A) the investments in the water facilities
2 are adequately maintained and operated for the
3 health and welfare of Native communities
4 served;

5 (B) the infrastructure investment is pro-
6 tected; and

7 (C) the intended economic benefit is real-
8 ized.

9 **SEC. 5. DEPARTMENT OF AGRICULTURE RURAL DEVELOP-**
10 **MENT.**

11 (a) APPROPRIATION.—In addition to amounts other-
12 wise available, there is appropriated to the Secretary of
13 Agriculture, out of amounts in the Treasury not otherwise
14 appropriated, \$500,000,000 to make grants under sec-
15 tions 306C and 306D of the Consolidated Farm and Rural
16 Development Act (7 U.S.C. 1926c, 1926d) to eligible enti-
17 ties described in subsection (b) to provide for the develop-
18 ment, use, and control of water (including the extension
19 or improvement of existing water supply systems) in eligi-
20 ble entities the residents of which face significant health
21 risks, as determined by the Secretary, due to a significant
22 proportion of the residents of the eligible entity not having
23 access to, or not being served by, an adequate affordable
24 water supply system.

1 (b) ELIGIBLE ENTITIES.—An entity eligible to re-
2 ceive a grant using amounts appropriated by subsection
3 (a)—

4 (1) is a Native community; and

5 (2) in the case of a grant under section 306D
6 of the Consolidated Farm and Rural Development
7 Act (7 U.S.C. 1926d), includes a consortium formed
8 pursuant to section 325 of Public Law 105–83 (111
9 Stat. 1597).

10 (c) NO MATCHING CONTRIBUTION.—The funds made
11 available under subsection (a) shall not require any match-
12 ing contribution otherwise required by any other provision
13 of law (including regulations).

14 (d) PRIORITY FOR FUNDING.—In awarding grants to
15 eligible entities using amounts appropriated by subsection
16 (a), the Secretary of Agriculture shall—

17 (1) treat members of an eligible entity in the
18 same manner as individuals who reside in a colonia
19 for purposes of subsections (a)(2)(B) and (c)(2) of
20 section 306C of the Consolidated Farm and Rural
21 Development Act (7 U.S.C. 1926c); and

22 (2) award the grants without requiring an eligi-
23 ble entity or the members of an eligible entity to
24 demonstrate an inability to finance the proposed
25 project—

1 (A) from the resources of the eligible entity
2 or members; or

3 (B) through commercial credit.

4 (e) INTERAGENCY COLLABORATION.—The Secretary
5 of Agriculture shall consult with the Director regarding
6 agency collaboration, project prioritization, and staffing
7 needs to ensure the amounts made available under this
8 section are used in the most effective manner to promote
9 access to water and sanitation.

10 **SEC. 6. BUREAU OF RECLAMATION.**

11 (a) RURAL WATER SUPPLY PROGRAM REAUTHOR-
12 IZATION.—

13 (1) AUTHORIZATION OF APPROPRIATIONS.—
14 Section 109(a) of the Rural Water Supply Act of
15 2006 (43 U.S.C. 2408(a)) is amended by striking
16 “2016” and inserting “2032”.

17 (2) TERMINATION OF AUTHORITY.—Section
18 110 of the Rural Water Supply Act of 2006 (43
19 U.S.C. 2409) is amended by striking “2016” and in-
20 serting “2032”.

21 (b) BUREAU OF RECLAMATION RURAL WATER SUP-
22 PLY PROGRAM.—

23 (1) DEFINITIONS.—In this subsection:

24 (A) RECLAMATION STATE.—The term
25 “Reclamation State” means a State described

1 in the first section of the Act of June 17, 1902
2 (43 U.S.C. 391; 32 Stat. 388, chapter 1093).

3 (B) SECRETARY.—The term “Secretary”
4 means the Secretary of the Interior, acting
5 through the Commissioner of Reclamation.

6 (2) COMPETITIVE GRANT PROGRAM FOR TRIBAL
7 CLEAN WATER ACCESS PROJECTS.—

8 (A) ESTABLISHMENT.—In accordance with
9 section 103 of the Rural Water Supply Act of
10 2006 (43 U.S.C. 2402), the Secretary shall es-
11 tablish a competitive grant program under
12 which an Indian Tribe shall be eligible to apply
13 for a grant from the Secretary in an amount
14 not to exceed 100 percent of the cost of plan-
15 ning, design, and construction of a project de-
16 termined by the Secretary to be eligible for
17 funding under subparagraph (B).

18 (B) ELIGIBILITY.—To be eligible for a
19 grant under subparagraph (A), a project shall,
20 as determined by the Secretary—

21 (i)(I) provide, increase, or enhance ac-
22 cess to safe drinking water for commu-
23 nities and households on Tribal land; or

1 (II) address public health and safety
2 concerns associated with access to safe
3 drinking water; and

4 (ii) be carried out in a Reclamation
5 State.

6 (C) PRIORITY.—

7 (i) IN GENERAL.—In providing grants
8 under subparagraph (A), the Secretary
9 shall give priority to projects that meet 1
10 or more of the following criteria:

11 (I) A project that would provide
12 potable water supplies to communities
13 or households on Tribal land that do
14 not have access to running water as of
15 the date of the project application.

16 (II) A project that would address
17 an urgent and compelling public
18 health or safety concern relating to
19 access to safe drinking water for resi-
20 dents on Tribal land.

21 (III) A project that would ad-
22 dress needs identified in the Report.

23 (IV) A project that is closer to
24 being completed, or farther along in
25 planning, design, or construction, as

1 compared to other projects being con-
2 sidered for funding.

3 (V) A project that would take ad-
4 vantage of the experience and tech-
5 nical expertise of the Bureau of Rec-
6 lamation in the planning, design, and
7 construction of rural water projects,
8 particularly with respect to a project
9 that takes advantage of economies of
10 scale.

11 (VI) A project that would take
12 advantage of local or regional partner-
13 ships that complement related efforts
14 by Tribal, State, or Federal agencies
15 to enhance access to drinking water or
16 water sanitation services on Tribal
17 land.

18 (VII) A project that would lever-
19 age the resources or capabilities of
20 other Tribal, State, or Federal agen-
21 cies to accelerate planning, design,
22 and construction.

23 (VIII) A project that would pro-
24 vide multiple benefits, including—

- 1 (aa) improved water supply
2 reliability;
3 (bb) public health improve-
4 ments;
5 (cc) ecosystem benefits;
6 (dd) groundwater manage-
7 ment and enhancements; and
8 (ee) water quality improve-
9 ments.

10 (ii) CONSULTATION.—In prioritizing
11 projects for funding under clause (i), the
12 Secretary—

13 (I) shall consult with the Direc-
14 tor; and

15 (II) may coordinate funding of
16 projects under this paragraph with
17 the Director, the Administrator of the
18 Environmental Protection Agency, the
19 Secretary of Agriculture, and the head
20 of any other Federal agency in any
21 manner that the Secretary determines
22 would—

23 (aa) accelerate project plan-
24 ning, design, or construction; or

1 (bb) otherwise take advan-
2 tage of the capabilities of, and
3 resources potentially available
4 from, other Federal sources.

5 (3) FUNDING.—

6 (A) IN GENERAL.—In addition to amounts
7 otherwise available, there is appropriated to the
8 Secretary, out of amounts in the Treasury not
9 otherwise appropriated, \$1,000,000,000 to
10 carry out this subsection.

11 (B) ADMINISTRATIVE EXPENSES; USE OF
12 FUNDS.—Of the amounts made available under
13 subparagraph (A), the Secretary may use up to
14 2 percent for—

15 (i) the administration of the rural
16 water supply program established under
17 section 103 of the Rural Water Supply Act
18 of 2006 (43 U.S.C. 2402); and

19 (ii) related management and staffing
20 expenses.

21 (c) FUNDING FOR NATIVE AMERICAN AFFAIRS
22 TECHNICAL ASSISTANCE PROGRAM OF THE BUREAU OF
23 RECLAMATION.—In addition to amounts otherwise avail-
24 able, there is appropriated to the Secretary of the Interior,
25 out of amounts in the Treasury not otherwise appro-

1 priated, \$90,000,000 for use, in accordance with section
2 201 of the Energy and Water Development Appropriations
3 Act, 2003 (43 U.S.C. 373d), for the Native American Af-
4 fairs Technical Assistance Program of the Bureau of Rec-
5 lamation for the fiscal year ending September 30, 2023,
6 to remain available until expended.